

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVIE SMITH, H-15030,
Plaintiff(s),
vs.
ROBERT AYRIS, JR., et al.,
Defendant(s).

)
)
) No. C 12-1112 CRB (PR)
)
) ORDER OF DISMISSAL
)
) (Docket #2 & 4)
)
)

Plaintiff, a prisoner at Corcoran State Prison, has filed a pro se complaint under 42 U.S.C. § 1983 attacking the validity of his state criminal conviction and sentence. Among other things, he claims that he was unlawfully kidnaped and set-up by various state officials. Plaintiff also seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915 (docket #2 & 4), which, based solely on his affidavit of poverty, is GRANTED.

Plaintiff's action must be dismissed without prejudice because it is well-established that any claim by a state prisoner that would necessarily imply the invalidity of his conviction or continuing confinement, as plaintiff's claim would here, must be brought in a habeas petition under 28 U.S.C. § 2254 after exhausting state judicial remedies. See Nelson v. Campbell, 541 U.S. 637, 642-44 (2004); see also Calderon v. Ashmus, 523 U.S. 740, 747 (1998) (claim by a prisoner attacking the fact or duration of his confinement must be brought under the habeas sections of Title 28 of the United States Code). And for essentially

1 the same reasons, a claim for damages based on unconstitutional conviction or
2 imprisonment would have to be dismissed without prejudice as well. See Heck v.
3 Humphrey, 512 U.S. 477, 486-487 (1994) (claim for damages for unlawful
4 incarceration or sentence not cognizable under § 1983 until conviction or
5 sentence at issue is invalidated).

6 For the foregoing reasons, the complaint is DISMISSED without prejudice
7 under the authority of 28 U.S.C. § 1915A(b).

8 The clerk shall enter judgment in accordance with this order, terminate all
9 pending motions as moot, and close the file.

10 SO ORDERED.

11 DATED: 04/17/2012



CHARLES R. BREYER
United States District Judge